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5
6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.
12

13 JESSE ALLEN DAUENHAUER,

14 Defendant.
15

NO: 1:16-CR-2065-RMP

GOVERNMENT'S MOTION IN
LIMINE

RE: SELF AUTHENTICATING
DOCUMENTS

Note of Hearing

April 11, 2017 at 11:00 am

With Oral Argument

16 Plaintiff, United States of America, by and through JOSEPH H.
17 HARRINGTON, Acting United States Attorney for the Eastern District of
18 Washington, and THOMAS J. HANLON, Assistant United States Attorney for the
19 Eastern District of Washington, moves *in limine* as follows:

20 **I. RELEVANT FACTS:**

21 On February 15, 1995, the Defendant was convicted of Second Degree Murder
22 and First Degree Assault, in Yakima County Superior Court, Cause Number 94-1-
23 01205-9.

24 On August 13, 2016, the Defendant was arrested as a motor vehicle accident.
Several firearms and ammunition were subsequently found in the vehicle.

25 On November 8, 2016, a Superseding Indictment was filed which charges the
26 Defendant with Felon in Possession of a Firearm and Ammunition. As such, the
27 Government's Motion In Limine
28 RE: Self Authenticating Documents

1 government is required to prove that the Defendant is a convicted felon. It is the
2 belief of the United States that the Defendant does not want to enter into a stipulation
3 concerning the fact that he is a convicted felon. As such, the government is required
4 to submit evidence that the Defendant is a convicted felon.

5 The government intends to offer several self-authenticating documents at trial.

6 **II. EVIDENCE THAT IS SELF AUTHENTICATING:**

7 Fed. R. Evid. 902 establishes several types of documents which are self-
8 authenticating and which do not extrinsic evidence of authenticity in order to be
9 admitted.

10 Certified Copies of Public Records are self-authenticating and they require no
11 extrinsic evidence of authenticity in order to be admitted. Fed. R. Evid. 902(4).

12 Fed. R. Evid 902 (4) provides:

13 The rule provides that a copy of an official record – or a copy of a document
14 that was recorded or filed in a public office as authorized by law –if the copy is
15 certified as correct by:

16 (A)The custodian or another person authorized to make the certification; or

17 (B)A certificate that complies with Rule 902(1)(2), or (3), a federal statute, or a
18 rule prescribed by the Supreme Court.

19 Fed. R. Evid. 803 establishes exceptions to the rule against hearsay-regardless
20 of whether the declarant is available.

21 Fed. R. Evid. 803(8) provides as relevant here:

22 Public Records. A record or statement of a public office if:

23 (A) It sets out:

24 (i) The office's activities;

25 (ii) A matter observed while under a legal duty to report, but not
26 including, in a criminal case, a matter observed by law enforcement
27 personnel; and
28

1 (B) neither the source of information nor other circumstances indicate a
2 lack of trustworthiness.

3 In *United States v. Weiland*, 420 F.3d 1062 (9th Cir. 2005), the defendant argued
4 that the district court erred in admitting his fingerprints, photograph, and four records
5 of conviction at trial as they were not properly authenticated. *Id.* at 1071-72. The
6 Ninth Circuit determined that such documents were self-authenticating under Rules
7 902(4) and 902(2). *Id.* at 1072.

8 Furthermore, in *Weiland*, the defendant argued that, even if they documents
9 were properly authenticated, they should have been excluded as inadmissible hearsay
10 pursuant to Fed. R. Evid. 802. *Id.* at 1074. The Ninth Circuit observed that “the law
11 of this circuit has long established that public records, including records of conviction,
12 must be admitted, if at all, under Rule 803(8), or in some cases, under a specific
13 hearsay rule, such as Rule 803(22), governing the admission of prior convictions.” *Id.*
14 (citing *United States v. Orellana-Blanco*, 294 F.3d 1143, 1149 (9th Cir. 2002); *United*
15 *States v. Pena-Gutierrez*, 222 F.3d 1080, 1086-87 (9th Cir. 2000)). The Court
16 observed that the fingerprints and photograph were public records of routine and
17 nonadversarial matters that fall within Rule 803(8)(B) and were admissible
18 thereunder. *Id.* The Court held “that the relevant contents of the “penitentiary packet”
19 including documents titled “Judgment and Sentence on Plea of Guilty,” the
20 fingerprints, and the photograph, were properly admitted pursuant to the public
21 records hearsay exception in Rule 803(8).” *Id.* at 1075.

22 Here, the government intends to offer the following self-authenticating
23 Certified Copies of Public Records at trial: (1) Second Amended Information; and (2)
24 Judgment and Sentence.¹

25 All of the documents are properly certified and comport with Rules 902(4);
26 902(1); 902(2); 803(8). Therefore, the government submits that such documents are

27 ¹ The documents have been attached to this motion and have been marked at Government’s Exhibits
28 #1-#3.

1 admissible and do not require extrinsic evidence of authenticity in order to be
2 admitted.

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4 Respectfully submitted this 21st day of March, 2017

5 MICHAEL C. ORMSBY
6 United States Attorney

7 s/Thomas J. Hanlon
8 THOMAS J. HANLON
9 Assistant United States Attorney
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2 I hereby certify that on March 21, 2017, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF System which will send notification of
4 such filing to the following: Michael W. Lynch
5

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